

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA on behalf
of and for the use and benefit of
DELTA MECHANICAL CONTRACTORS, LLC,

Plaintiff,

V.

INTEGRATED FACILITIES CONSTRUCTION
CORP. and
ENDURANCE AMERICAN INSURANCE
COMPANY,

Defendants.

Civil Action No. _____

COMPLAINT AND JURY DEMAND

Pursuant to the Miller Act, 40 U.S.C. § 3131, *et seq.*, Plaintiff, Delta Mechanical Contractors, LLC (“Delta”), in the name of the United States, seeks to recover amounts owed under its subcontract with Defendant, Integrated Facilities Construction Corp. (“IFCC”), and under the Labor and Material Payment Bond issued by its surety, Defendant Endurance American Insurance Company (“Endurance”), on the federally owned construction project located at the Hanscom Airforce Base in Bedford, MA.

PARTIES

1. Pursuant to 40 U.S.C. § 3133(b)(3), this action is brought in the name of the United States on behalf of Plaintiff, Delta, a Delaware limited liability corporation with a usual place of business at 44 Wilclar Street, Warwick, Rhode Island 02886.

2. Defendant IFCC is a corporation organized and existing pursuant to the laws of the State of Massachusetts with a principal place of business located at 92 High St., Suite 23, Medford, MA 02155.

3. Defendant Endurance is an insurance company organized and existing pursuant to the laws of the State of New York and with an address of 1221 Avenue of the Americas, 18th Fl, New York, NY 10020. Endurance is surety for IFCC under Labor and Material Payment Bond No. EAIC4004330 executed on March 17, 2017, in accordance with 40 U.S.C. § 3131-3134 (the “Bond”).

JURISDICTION AND VENUE

4. The subcontract at issue concerned work performed at the Hanscom Air Force Base which is owned and controlled by the U.S. government and was performed for the Army and Air Force Exchange Service (“AAFES”). Accordingly, jurisdiction is proper under 40 U.S.C. § 3133(b)(3).

5. The Court has pendant and supplemental jurisdiction over claims brought under state law pursuant to 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391(b) and (c), and 40 U.S.C. § 3133 (b)(3) (B) as the contract at issue was performed in Bedford, MA.

FACTS

7. The United States, acting by and through the AAFES, entered into a prime contract with IFCC for a project known as “Construct Express/Gas + Renovate Exchange/Service Mall Hanscom AFB, MA” (the “Project”), pursuant to contract number 170035 4563 (the “Prime Contract”).

8. Endurance, as surety, issued the Bond on behalf of its principal, IFCC, in the penal sum of \$6,431,510.00 to protect the interests of Delta and other subcontractors on the Project.

9. On or about March 31, 2020, IFCC subcontracted with Delta to fabricate, deliver and furnish Plumbing, Fire Suppression, and HVAC work for the Project (the “Subcontract”).

10. In consideration for the work performed under the Subcontract, IFCC agreed to pay Delta a total of \$564,900.00.

11. Thereafter, the Subcontract was amended 8 times by change orders from IFCC so that IFCC agreed to pay Delta a total of \$587,114.89.

12. Delta has completely and diligently performed its work on the Project in accordance with the Subcontract.

13. Delta timely submitted invoices, requisitions, and applications for payment to IFCC in accordance with the Subcontract for the labor, materials, and equipment it has furnished to the Project with the consent of the AAFES.

14. IFCC, however, has only paid Delta \$557,759.15, which has left an outstanding balance due and owing to Delta on the amended Subcontract in the amount of \$29,355.74.

15. IFCC has acknowledged and does not dispute owing Delta \$29,355.74 on the amended Subcontract.

16. Further, Delta submitted Potential Change Order Nos 1, 4, 8, 11, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, and 28 to IFCC pursuant to the Subcontract for additional work performed and costs incurred in the amount of \$248,656.49 (the "CORs").

17. Delta is therefore owed the total amount of \$278,012.23 for its work on the Project.

18. Despite demands by Delta, IFCC has failed to pay Delta \$278,012.23 owed under the Subcontract.

19. At all times relevant hereto, IFCC was fully aware that it owed Delta compensation under the Subcontract.

20. More than 90 days have passed since Delta performed the last of its labor and/or furnished material to the Project for which it seeks payment.

21. Despite timely, professionally, and completely furnishing all labor, material and equipment under the Subcontract, to date, Delta has not been paid the amount of approximately \$278,012.23 for the labor and/or material it furnished in connection with the Project.

22. The aforementioned Bond constitutes the only security awardable to Delta for the labor, material, and equipment furnished and incorporated into the Project.

23. To date, neither IFCC nor Endurance has paid Delta for the \$278,012.23 due and owing under the Bond.

COUNT I
(Breach of Contract Against IFCC)

24. Delta repeats and incorporates by reference the averments set forth in paragraphs 1 through 23 as set forth fully herein.

25. Delta has fully performed its obligations under the Subcontract with IFCC.

26. Despite numerous demands for payment, IFCC has failed, refused, and neglected to pay Delta the \$278,012.23 due and owing under the Subcontract.

27. IFCC has materially breached the Subcontract by, among other things, failing to fully pay Delta amounts owed to it under the Subcontract, which has caused Delta damage.

28. As a direct and proximate result of IFCC's material breach, Delta has been damaged.

29. WHEREFORE, Plaintiff Delta demands judgment against Defendant IFCC in the amount of approximately \$278,012.23 together with interest, costs, attorney's fees, and such other further relief as the Court deems just and proper.

COUNT II
(Quantum Meruit Against IFCC)

30. Delta repeats and incorporates by reference the averments set forth in paragraphs 1 through 29 as if set forth fully herein.

31. Delta furnished valuable labor, equipment, material, and services to IFCC, which IFCC accepted with the knowledge that Delta expected payment.

32. The fair market value of that work was \$835,771.38.

33. Delta has a reasonable expectation of being compensated for the goods and services provided.

34. Despite repeated demands, Delta has only been paid \$557,759.15 by IFCC.

35. IFCC has been unjustly enriched by its failure to pay Delta or take adequate precautions to ensure that Delta was paid for providing labor and materials to the Project, in the amount of \$278,012.23, plus interest thereon.

WHEREFORE, Plaintiff Delta demands judgment against Defendant IFCC in the amount of approximately \$278,012.23 together with interest, costs, attorney's fees, and such other further relief as the Court deems just and proper.

COUNT III
**(Miller Act Payment Bond Claim Against IFCC and
Endurance, Jointly and Severally)**

36. Delta repeats and incorporates by reference the allegations set forth in paragraphs 1 through 35 as set forth fully herein.

37. Delta properly performed its work on the Project.

38. IFCC has not fully paid Delta for the work it performed.

39. Under the Miller Act, the Bond is enforceable as against IFCC and its surety, Endurance, jointly and severally, in the amount of the outstanding balance due to Delta. Accordingly, IFCC and Endurance owe Delta the amount of \$278,012.23.

40. Ninety (90) days have elapsed since Delta last furnished labor, equipment, and services on the Project.

41. This Complaint is filed within one (1) year after Delta last furnished labor, equipment, and services on the Project.

WHEREFORE, Plaintiff Delta demands judgment against Defendants IFCC and Endurance, jointly and severally, in the amount of approximately \$278,012.23, plus all costs, attorneys' fees, and such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL TRIABLE ISSUES

Respectfully submitted,

UNITED STATES OF AMERICA,
on behalf of and for the use and benefit of
DELTA MECHANICAL CONTRACTORS, LLC,

Attorneys for Plaintiff,

By its Attorneys,
PANNONE LOPES DEVEREAUX & O'GARA LLC

/s/ William E. O'Gara

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